IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4395 OF 2007

Sou. Rakama Tukaram Bandgar & Ors..... ....Petitioners.
V/s
Shamrao Sopan Maharnur & Ors..... ....Respondents.

Mr.B.G.Vaidya, Adv. For the petitioners.

Mr.Sandesh Patil for respondents 1 to 3.

CORAM: A.P.DESHPANDE, J.
13/7/07

PC:

The petitioner-original plaintiff filed a suit for cancellation of sale deed, declaration, partition and separate possession. The plaintiff claimed that he was in possession of the suit property. The trial Court allowing the application moved under under Order 39 Rules 1 and 2 granted temporary injunction as prayed for restrained the defendants from interfering with possession of the plaintiff over the suit land. Aggrieved thereby present respondents filed miscellaneous civil appeal before the district Court. The First Appellate Court being of the view that the plaintiff has failed to establish his possession over the suit land has reversed the order passed by trial Court and rejected the application for temporary injunction by allowing the appeal. Against this appellate interlocutory order the present writ petition has been filed. The First

Appellate Court has mainly relied upon entries in 7/12 extract in regard to occupation and cultivation to reach the finding that the plaintiff has failed to establish his possession. Learned counsel for the petitioner has submitted that the finding recorded by the trial Court about the plaintiff being in possession ought not to have been interfered with by the First Appellate Court moreso, while considering the appeal under Order 43. I do not propose to go into the merits of the matter for the reason that the impugned order is interlocutory order. However ends of justice would be met by seeking early disposal of the suit. Hence writ petition is dismissed summarily. The trial Court is directed to decide the suit as expeditiously as possible preferably within six months from today uninfluenced by the observations made by ad-hoc District Judge while allowing the miscellaneous civil appeal.

13.7.07